SUPREME COURT OF THE UNITED STATES.

No. 340.

LAFAYETTE MAYNARD, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the circuit court of the United States for the districts of California, in and for the northern district thereof.

Amended complaint.

THE UNITED STATES OF AMERICA
vs.
LAFAYETTE MAYNARD.

The United States of America, by William Blanding, their attorney, complain against Lafayette Maynard, for that whereas the said defendant, together with Richard P. Hammond and Joseph L. Folsom, heretofore, to wit, on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-three, at the city of Washington, in the District of Columbia, by their certain writing obligatory, sealed with their seals, and now shown to the court here, (the date whereof is the day and year aforesaid,) acknowledged themselves to be held and firmly bound, jointly and severally, to the said plaintiffs, in the full and just sum of one hundred thousand dollars, money of the United States, to be paid to the said plaintiffs, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting "that whereas the President of the United States hath, pursuant to law, appointed the said Richard P. Hammond to the office of collector of the customs for the district of San Francisco, in the State of California," it was conditioned
2 that "if the said Richard P. Hammond has faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue," as by the said writing obligatory and the condition thereof, a copy of which is hereunto annexed, will more fully appear.

And the said plaintiffs aver that the said Richard P. Hammond, by appointment of the President of the United States, made in pursuance of law, was collector of the customs for the district of San Francisco, in the State of California, from the first day of July, A. D. 1853, until the twentieth day of September, A. D. 1855, inclusive.

And the said plaintiffs further aver that the said Richard P. Hammond did not truly and faithfully continue to execute and discharge all the duties of the said office according to law, from the first day of July, A. D, 1853, to the twentieth day of September, A. D. 1855, inclusive; and the said plaintiffs assign as a breach of the condition of the said bond or writing obligatory that on divers days and times within the period aforesaid, and whilst the said Richard P. Hammond was collector as aforesaid he, the said Hammond, did collect and receive in his official capacity divers large sums of the public money, of which, on the twentieth day of September, A. D. 1855, he unlawfully retained, and now unlawfully retains, in his hands the sum of two hundred and fifty-nine thousand nine hundred and forty-
3 five dollars and twenty-seven cents, which sum the said Rich-

ard P. Hammond then and there neglected and refused to pay to the said plaintiffs, although often requested so to do, but then and there fraudulently converted the same to his own use.

And the plaintiffs aver that the said defendant, Lafayette Maynard, although heretofore duly requested to pay the said sum of one hundred thousand dollars has also wholly neglected and refused to pay the same to the plaintiffs; by means of which said breach an action hath accrued to the said plaintiffs to have and demand of and from the said defendant the said sum of one hundred thousand dollars.

Wherefore the said plaintiffs demand judgment against the said defendant, Lafayette Maynard, for the said sum of one hundred thousand dollars and costs of suit.

San Francisco, May 1, 1857.

WM. BLANDING, *U. S. Att'y.*

4 Know all men by these presents that we, Richard P. Hammond, Joseph L. Folsom, and Lafayette Maynard, are held and firmly bound unto the United States of America in the full and just sum of one hundred thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

The condition of the foregoing obligation is such that whereas the President of the United States hath, pursuant to law, appointed the said Richard P. Hammond to the office of collector of the customs for the district of San Francisco, in the State of California:

Now, therefore, if the said Richard P. Hammond has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

RICH'D P. HAMMOND. [SEAL.]
J. L. FOLSOM. [SEAL.]
L. MAYNARD. [SEAL.]

Sealed and delivered in the presence of—
WM. R. WOODWARD.
ROB'T M. MCLANE.

5 I, Richard P. Hammond, having been appointed to the office of collector of the customs for the district of San Francisco, in the State of California, do solemnly, sincerely, and truly swear that I will diligently and faithfully execute the duties of the said office of collector, and will use the best of my endeavors to prevent and detect frauds in relation to the duties imposed by the laws of the United States. I further swear that I will support the Constitution of the United States.

RICH'D P. HAMMOND, *Collector.*

Sworn to and subscribed this thirtieth day of June, 1853, before me.

Witness my hand and seal.

[SEAL.] OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

I, John A. Munroe, clerk U. S. dis't court, do hereby certify that Ogden Hoffman, jr., who administered the above oath, was at the time of doing so duly authorized to administer the same, and that full faith and credit are due to his official attestations.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States dis't court, N. D. of Cal., this 30th day of June, 1853.

[SEAL.] JNO. A. MUNROE, *Clerk.*

I have no personal knowledge of the pecuniary ability of the sureties to this bond, but on information which I have received, and fully rely on, I am of opinion that the security is ample.

25 March, 1853.

P. R. FENDALL, *U. S. Att'y, D. C.*

6 DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered that on this twenty-fifth day of March, in the year eighteen hundred and fifty-three, Joseph L. Folsom and Lafayette Maynard, securities in the aforegoing bond, personally now of the said District of Columbia, appeared before me, the undersigned, a justice of the peace in and for the said county of Washington, and each for himself made oath on the holy evangelist of Almighty God, that over and above the payment of all his just debts, he is worth the sum of one hundred thousand dollars, the penalty of the aforesaid bond.

WM. R. WOODWARD, *J. P.*

DISTRICT OF COLUMBIA, *Washington county, to wit:*

I, John A. Smith, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify that William R. Woodward, esq., before whom the above and annexed affidavit was made, and who has thereto subscribed his name, was at the time thereof, a justice of the peace in and for the county and district aforesaid, duly commissioned and qualified, and that his signature thereto is genuine.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court this 25th day of March, 1853.

[SEAL.] JNO. A. SMITH, *Cl'k.*

Indorsed: Filed this 5th day of May, A. D. 1857.

GEO. PEN JOHNSTON, *Clerk.*
WM. STONE BOTTS, *Dep. Clerk.*

7 *Summons.*

In the circuit court of the United States for the districts of California, in and for the northern district:

THE UNITED STATES, plaintiffs,
vs.
LAFAYETTE MAYNARD, defendant.

UNITED STATES OF AMERICA:

Action brought in the said circuit court, and the complaint filed in the city and county of San Francisco, in the office of the clerk of said circuit court.

The President of the United States of America, greeting, to Lafayette Maynard:

You are hereby required to appear in an action brought against you by the abovenamed plaintiff in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons) in the office of the clerk of said court, in the city and county of San Francisco, within ten days (exclusive of Sundays, the day of services) after the service on you of this summons, if resident and served within this county, or if resident and served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover the sum of one hundred thousand dollars, alleged to be due the U. S. on a bond made by said defendant to said plaintiffs, dated 25th day of March, 1853; (as will more fully appear in the complaint;) also one hundred dollars damages and costs of suit, and if you fail to appear and plead,
8 answer, or demur as herein required, judgment by default will be entered against you and each of you.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the 81st.

Attest: GEO. PEN JOHNSTON, *Clerk.*
CUTLER McALLISTER, *Deputy Clerk.*

OFFICE OF THE MARSHAL OF THE NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I hereby certify that I received the within summons on the 14th day of November, A. D. 1856, and personally served the same on the 15th day of November, A. D. 1856, upon Lafayette Maynard, by delivering to said defendant personally, in the city of San Francisco a copy of a said summons, attached to a certified copy of the complaint.

Dated San Francisco, this fifteenth day of November, A. D. 1856.

JAMES Y. McDUFFEY, *Marshal,*
By J. E. TERRELL, *Deputy Marshal.*

Indorsed: Filed this 15th day of November, A. D. 1856.

GEO. PEN JOHNSTON, *Clerk.*
CUTLER McALLISTER, *D. C.*

9 *Answer to amended complaint.*

In the circuit court of the United States for the districts of California, in and for the northern district of said State.

THE UNITED STATES OF AMERICA }
vs.
LAFAYETTE MAYNARD. }

The said defendant, Lafayette Maynard, comes and defends the wrong and injury, when, &c., and for answer to the amended complaint herein says that the writing obligatory in the amended complaint herein set forth is not the act and deed of the said Lafayette Maynard, and of this he puts himself upon the country.

And for a further answer in this behalf defendant denies each and every, all and singular, of the allegations in the said amended complaint set forth, and says that the same and each and every of them are untrue, and of this he puts himself upon the country.

And for a further answer in this behalf, defendant says that the said Richard P. Hammond did truly and faithfully execute and discharge all the duties of the said office, according to law, during all and singular the period aforesaid, and he denies that said Hammond has unlawfully detained, or now unlawfully detains, the said sum of two hundred and fifty-nine thousand nine hundred and forty-five $\frac{11}{100}$ dollars, or any other sum, or that said Hammond has neglected or refused to pay the same to the said plaintiffs as alleged, or
10 that he has fraudulently converted the same to his own use, and of this he puts himself upon the country.

HALL McALLISTER, *Att'y for Def't*

San Francisco, Feb'y 14, 1862.

And the United States likewise.

SHARP, HOGE & WILSON, *for U. S.*

I hereby consent to the filing of the foregoing answer to the amended complaint, waiving all objections as to the time of filing the same.

WM. H. SHARP, *U. S. Att'y.*

February 14th, 1862.

Indorsed: Filed Feb'y 26th, 1862.

HENRY C. HYDE, *Clerk.*

11 Circuit court, United States, 10th circuit, northern district of California, June term, A. D. 1864.

Stipulation.

UNITED STATES OF AMERICA }
vs.
LAFAYETTE MAYNARD. }

It is hereby stipulated and agreed between the parties hereto by their attorneys of record, respectively, that this cause shall be, and hereby is, submitted to the circuit court upon the testimony heretofore taken, and now before the court in the case of the United States

vs. Richard P. Hammond, together with the additional fact, which is hereby admitted, of the due execution of the bond as alleged in the complaint in this action, for trial and decision by the said court, sitting without a jury, the parties hereby expressly waiving a jury, and submitting the cause as aforesaid, with the privilege to either to make such additional proof as he may think proper. Any rulings on questions of law which the judge may make in his opinion may be excepted to by either party, and with the like effect as though tried by a jury.

San Francisco, June 21st, 1864.

H. & C. McALLISTER,
Att'ys for Def't, Maynard.
WM. H. SHARP, *U. S. Att'y.*
HOGE & WILSON, *of Counsel for U. S.*

Indorsed: Filed Aug. 19, 1864, in open court.
GEO. C. GORHAM, *Clerk,*
P'r W. F. HUESTIS, *D. C.*

12 *Findings of Judge.*

In the circuit court of the United States of America, 10th district, northern district of California.

THE UNITED STATES OF AMERICA
vs.
LAFAYETTE MAYNARD.

This cause having been tried by the court without a jury, a jury having been expressly waived by the stipulation in writing of the respective parties, and the court having heard the evidence and arguments of counsel for the respective parties, the undersigned, judge of said court, before whom said cause was tried, do find the following facts:

First. That Richard P. Hammond in the complaint named was duly appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, collector of the customs for the district of San Francisco, in the State of California, and was duly commissioned as such on the 25th day of March, 1853.

Second. That on the said 25th day of March, 1853, the said Richard P. Hammond, as such collector, together with the defendant, Lafayette Maynard, and one Joseph L. Folsom, made, executed, and delivered their certain bond or writing obligatory as alleged and set forth in said complaint, in the sum of one hundred thousand dollars; and on the 30th day of June, 1853, said Hammond took the oath of office as required by law, and on the first day of July, 1853,
13 entered into the possession of his said office, and upon the performance of his duties as such collector.

Third. That the said Hammond continued to hold the said office under said appointment, and in the performance of the duties thereof, from the said first day of July, 1853, until the 20th day of Septem-

ber, 1855, both inclusive, when he was removed from office and his successor appointed.

Fourth. That during his said term of office and the continuance thereof from the said first day of July, 1853, until the said twentieth day of September, 1855, large amounts of the public moneys of the United States came into his hands as such collector, amounting in the aggregate to many millions of dollars.

Fifth. That on the said 20th day of September, 1855, the said Hammond had in his hands of the public moneys belonging to the United States, which had come into his hands as such collector, and which had been paid to and received by him officially as such collector for and on behalf of the United States, the sum of one hundred and twenty-nine thousand two hundred and thirty-nine dollars and four cents.

Sixth. That the said Hammond neglected and refused to pay over or account to the United States on the said 20th day of September, 1855, and ever since, and still neglects and refuses to pay the said sum of one hundred and twenty-nine thousand two hundred and thirty-nine dollars and four cents, or any part thereof, although the same has been often demanded, and the said sum is still due and un-
14 paid, and the whole thereof.

As a conclusion of law, I find that defendant is indebted to the plaintiff, the United States of America, in the sum of one hundred thousand dollars, and that the said plaintiff is entitled to judgment against the said defendant for the said sum of one hundred thousand dollars.

OGDEN HOFFMAN, *Dist. Judge.*

Indorsed: Filed April 24th, 1865.

GEO. C. GORHAM, *Clerk,*
P'r HUESTIS, *Deputy Clerk.*

15 *Judgment.*

In the circuit court of the United States, northern district of California.

THE UNITED STATES OF AMERICA
vs.
LAFAYETTE MAYNARD.

This cause having been tried by the court without a jury, before the honorable Ogden Hoffman, one of the judges of said court, presiding, and the said judge having filed his findings in pursuance of the statute in such case made and provided, by which it appears and is found that the defendant is indebted to the plaintiff in the sum of one hundred thousand dollars ($100,000:)

It is therefore considered and adjudged that the plaintiff do have and recover of said defendant the said debt aforesaid, to the sum of one hundred thousand dollars, and also for the plaintiff's costs and charges about this suit in this behalf expended adjudged to said

plaintiff, which said debt and costs amount in the whole to one hundred thousand and forty-nine dollars and $\frac{40}{100}$.

Judgment entered April 25th, 1865.

GEO. C. GORHAM, *Clerk*,
By W. F. HUESTIS, *Dep. Clerk.*

Indorsed: Filed April 24th, 1865.

GEO. C. GORHAM, *Clerk.*
By W. F. HUESTIS, *D. C.*

16 In the circuit court of the United States, north'n dis't of California, tenth circuit.

THE UNITED STATES
vs.
LAFAYETTE MAYNARD,

Costs.

Att'y's fee	$20 00
Clerk's fees	26 40
Marshal's fees	3 00
Taxed at	49 40

April 29th, 1865.

GEO. C. GORHAM, *Clerk.*
Pr W. F. HUESTIS, *Deputy.*

17 In the circuit court of the United States for the tenth judicial circuit, in and for the northern district of California.

LAFAYETTE MAYNARD, plaintiff in error,
vs.
UNITED STATES OF AMERICA, defendant in error. } At common law.

Now, on this 17th day of June, A. D. 1865, comes Hall McAllister, on the part of Lafayette Maynard, the abovenamed plaintiff in error, and also comes Delos Lake, esq., district attorney of the United States, and J. P. Hoge, special counsel of the United States, and the said Hall McAllister presents a writ of error and citation duly issued and a bond executed by the said plaintiff in error, with two sureties in the sum of ($125,000) one hundred and twenty-five thousand dollars, approved by the honorable Stephen J. Field, associate justice of the Supreme Court of the United States, and prays for a supersedeas in said action until the disposition of the said writ of error.

And whereas it appears that at the time the finding and decision of the judge who tried said action was filed, and before the entry of judgment therein, it was understood between the United States district attorney and said Hall McAllister that nothing should be done to prejudice plaintiff's in error right to a writ of error and supersedeas in said action, and that he (said plaintiff in error) need

take no steps towards suing out said writ of error for the purpose of procuring a supersedeas in said action, until he (said plaintiff in error) was notified so to do by said United States district attorney.

And whereas there appears to have been an honest misunderstanding as to terms of said verbal agreement between said United States district attorney and said Hall McAllister;

And whereas, it appears to have been the bona fide intention of said plaintiff in error to sue out a writ of error, so that the same should be a supersedeas in said action:

Now, therefore, in view of foregoing facts, which are assented to by said United States district attorney, it is ordered that aforesaid writ of error, citation, and bond shall constitute a supersedeas in said action, and that no execution shall issue upon the judgment rendered therein until the disposition of said writ of error.

Indorsed: Filed June 17, 1865.

GEO. C. GORHAM, *Clerk*,
By W. F. HUESTIS, *Dep. Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the circuit court of the United States of America for the tenth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you, between the United States of America, plaintiffs, and Lafayette Maynard, defendant, manifest error hath happened, to the great damage of the said Lafayette Maynard, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first day of the next term of said Supreme Court, to wit, Monday, the fourth day of December, A. D. 1865, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this tenth day of March, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL.]

GEO. C. GORHAM,
Clerk U. S. Cir. C't, North'n Dis't of Cal'a,
By W. F. HUESTIS, *Dep. Clerk.*

[U. S. rev. stamp, 50 cts.]

22 Indorsed: U. S. Supreme Court. Lafayette Maynard *vs.* The United States of America. Writ of error.
Filed June 17, 1865.

GEO. C. GORHAM, *Clerk*,
By W. F. HUESTIS, *Dep. Clerk.*

23 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the tenth judicial circuit and for the northern district of California, wherein Lafayette Maynard is plaintiff, and the United States of America are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Stephen J. Field, one of the justices of the said Supreme Court of the United States, this seventeenth day of June, A. D. one thousand eight hundred and sixty-five.

STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court.

26 The series of within citation is hereby admitted.
San Francisco, June 17th, 1865.

DELOS LAKE, *U. S. Att'y.*

Indorsed: U. S. Supreme Court. Lafayette Maynard *v.* The United States of America. Citation.
Filed June 17, 1865.

GEO. C. GORHAM, *Clerk*,
By W. F. HUESTIS, *Dep. Cl'k.*

27 UNITED STATES OF AMERICA, *Northern dist. of California, ss:*

I, Geo. C. Gorham, clerk of the circuit court of the United States, northern district of California, tenth circuit, do hereby certify that the foregoing 27 pages, from 1 to 27, both inclusive, contain a full, true, and correct copies of the judgment roll and record in the suit entitled, "Lafayette Maynard, pl'ff in error, *vs.* the United States, def'ts in error," as the same now remains of record and on file in my office, and of the whole thereof.

Witness my hand and the seal of said court, affixed at the city of San Francisco, this 6th day of November, A. D. 1865, and of the independence of these United States the 90th.

[SEAL.] GEO. C. GORHAM, *Clerk*,
By W. F. HUESTIS, *Dep. Clerk.*

[5-ct. rev. stamp.]